

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, No CR-05-0491 VRW
Plaintiff ORDER

v

SEMYON NEYS et al,
Defendant.

Defendant Paul Ancajima appeals the magistrate judge's
detention order. For reasons stated below, the court affirms the
magistrate judge's order.

I.

On July 28, 2005, a grand jury indicted Ancajima for
violating 21 USC § 846 (conspiracy to distribute methamphetamine
and 3,4 methylenedioxymethamphetamine, otherwise known as MDMA or
"ecstasy"), and 21 USC § 841(b)(1)(C) (distribution of MDMA). Doc

1 #31. The maximum penalties prescribed by statute for the charged
2 offenses are life imprisonment and twenty years imprisonment,
3 respectively.

4 Because the Controlled Substances Act prescribes a
5 maximum penalty of at least ten years imprisonment for the offenses
6 with which Ancajima has been charged, he faces a rebuttable
7 presumption "that no conditions or combinations of conditions will
8 reasonably assure the appearance of the person as required and the
9 safety of the community." 18 USC § 3142(e). After hearing the
10 parties and reviewing the Pretrial Services Report, the magistrate
11 concluded that Ancajima failed to rebut this presumption and
12 ordered that Ancajima be detained while he awaits trial. Doc #68.
13 Ancajima appealed. Doc #80.

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15 II.
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17 When reviewing a magistrate's detention order, a district
18 court "should review the evidence before the magistrate and make
19 its own independent determination whether the magistrate's findings
20 are correct, with no deference." United States v Koenig, 912 F2d
21 1190, 1193 (9th Cir 1990). "[T]he district court is to make its
22 own 'de novo' determination of the facts, whether different from or
23 an adoption of the findings of the magistrate," and "the ultimate
24 determination of the propriety of detention is also to be decided
25 without deference to the magistrate's ultimate conclusion." *Id.*

26 As noted, Ancajima faces a rebuttable presumption that
27 his release would pose a risk of flight and danger to the
28 community. This places upon Ancajima the burden of producing some

evidence to rebut the presumption. If Ancajima satisfies that burden, the burden of production shifts to the government to show by clear and convincing evidence that Ancajima is a danger to community and by a preponderance of the evidence that he poses a risk of flight. See United States v Quartermaine, 913 F2d 910, 916-17 (11th Cir 1990). The government bears the burden of persuasion at all times. See *id* at 916.

III.

1 events leading to his current predicament. As a juvenile, he was
2 charged with offenses arising from possession of tobacco, joyriding
3 and fistfighting. PSR at 2.

4 Neither Ancajima nor his family possess sufficient
5 financial assets to post bail. Although his mother and aunt are
6 willing to sign as sureties on a bond securing his release, their
7 financial assets are negligible. Counsel for Ancajima emphasizes
8 his family ties to this judicial district as evidence that he will
9 appear in court as necessary. The United States argues that
10 because Ancajima appears to have ready access to large quantities
11 of controlled substances for distribution, he will pose a danger to
12 the community if released.

13 Generally, family ties alone will not rebut the
14 presumption if they are "not the sort of family ties from which we
15 can infer that a defendant is so deeply committed and personally
16 attached that he cannot driven from it by the threat of a long
17 prison sentence." Reuben, 974 F2d at 586. In light of all the
18 circumstances reflected in the record, the court cannot conclude
19 that Ancajima's familial bonds so tether him to this judicial
20 district that there is not a significant risk of him fleeing given
21 the serious penalties he potentially faces.

22 Accordingly, the court agrees with the magistrate judge
23 that Ancajima has failed to rebut the presumption created by §
24 3142(e). The court, however, is willing to reconsider the matter
25 if Ancajima can provide some meaningful form of security for his
26 release.

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IV

The magistrate judge's order detaining Ancajima is AFFIRMED, and it is hereby ORDERED that Ancajima's detention shall continue pending trial. If Ancajima comes forward with security for his release, the court will reconsider its order upon proper motion.

IT IS SO ORDERED.



VAUGHN R WALKER

United States District Chief Judge